

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CASE NO. 05-11283-NG

TERESA A. MCCOY)
)
Plaintiff,)
)
v.)
)
PRUDENTIAL INSURANCE COMPANY)
OF AMERICA)
)
Defendant.)

JOINT MOTION TO STAY

The parties to the above-entitled action, Plaintiff Teresa A. McCoy (“Ms. McCoy”) and the Defendant, Prudential Insurance Company of America (“Prudential”) jointly move this Court to enter an order staying this action, and as grounds therefore, state as follows:

1. **Nature of the Action.** Ms. McCoy seeks to recover disability benefits under a group insurance policy issued by Defendant, Prudential Insurance Company of America (“Prudential”) to Ms. McCoy’s employer, State Street Bank pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), specifically 29 U.S.C. § 1132(a)(1)(B).
2. **Procedural Background.** Ms. McCoy commenced this suit on or about June 17, 2005. Defendants have not yet answered the Complaint. Rather, the parties have agreed to permit Ms. McCoy to complete the ERISA internal appeal process (“Internal Appeal”) prior to litigating to conclusion this federal court action. Ms. McCoy’s Internal Appeal is currently being reviewed by the Prudential as part of the Internal Appeal process. It is reasonably expected that Prudential

will render a decision by November 9, 2005, unless extenuating circumstances require additional time.

3. Grounds for Stay. Ms. McCoy desires to pursue the non-judicial remedy of pursuing her claim through the Prudential Internal Appeal. The Internal Appeal will permit Prudential to conduct a new review of its denial of Ms. McCoy's claim, review new and additional information, and render a decision either upholding its original denial of Ms. McCoy's claim or reversing that decision. If the Internal Appeal results in a reversal or other change in the prior decision denying Ms. McCoy's claim for benefits, this action will be moot. To the extent that following the Internal Appeal, or additional Internal Appeal, there remains a complete or partial denial of benefits, Ms. McCoy's right to initiate or continue litigation regarding that portion of the prior denial that has not been reversed or changed shall not be waived.

Any applicable statute of limitations shall be tolled during the Internal Appeal.

Staying the litigation makes practical sense since the Internal Appeal might moot the claims in the lawsuit.

The granting of this Motion will not prejudice either party, and is a practical and cost effective manner to try to resolve this litigation.

4. Relief Requested. The parties respectfully request that the Court stay the action pending completion of the reassessment of Ms. McCoy's claim under the Internal Appeal, pursuant to the terms set forth above.

THE PLAINTIFF,
TERESA MCCOY,
By her Attorneys,

/s/Jonathan M. Feigenbaum

Jonathan M. Feigenbaum, Esq.
B.B.O. #546686
Phillips & Angley
One Bowdoin Square
Boston, MA 02114
617-367-8787

THE DEFENDANT,
THE PRUDENTIAL INS. CO. OF
AMERICA,

By its Attorneys,
/s Carey L. Bertrand (JMF)

William T. Bogaert, Esq.
B.B.O. # 546321
Carey L. Bertrand, Esq.
B.B.O. # 650496
Wilson, Elser, Moskowitz,
Edelman & Decker, LLP
155 Federal Street
Boston, MA 02110
617-422-5300

CERTIFICATE OF SERVICE

I hereby certify that I served this through the electronic filing system of the US District Court, and mailed a copy, first class, postage prepaid to attorney Carey L. Bertrand this date.

/s/ Jonathan M. Feigenbaum

Jonathan M. Feigenbaum

DATED:October 6, 2005

L:\Tmcc001\stay.mot